

PLM-11

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-191121

DATE: March 20, 1979

MATTER OF: Robert V. Linderman - [Reconsideration  
of claim for real estate expenses]

- DIGEST: 1. Employee requests reconsideration of prior decisions denying claim for real estate expenses incident to overseas transfer. Prior decisions are sustained since employee was not transferred to Washington, D.C., prior to overseas transfer and agency would not be justified in authorizing short-term transfer for purpose of paying relocation expenses. Furthermore, we are unaware of any entitlement to real estate expenses where an employee is transferred overseas with return rights to a different duty station.
2. Employee who was erroneously reimbursed real estate expenses incident to overseas transfer requests collection of debt be suspended since employing agency was reimbursed by foreign government for these expenses. Employee's entitlement to relocation expenses is based upon applicable statutes and regulations governing travel and relocation expenses for Federal employees, and erroneous payments must be recovered. Furthermore, claim is not for reporting to Congress under Meritorious Claims Act, 31 U.S.C. § 236.
3. Employee who was erroneously paid real estate expenses requests that agency collection efforts be suspended while he pursues private relief through legislation or legal action. Where legislation has been introduced or lawsuit has been filed, we would not object to suspension of collection efforts. However, collection efforts should continue until legislation is introduced or lawsuit is filed.

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4. Employee who is indebted for erroneous real estate expense payment requests that size of installment payment be reduced. Federal Claims Collection Act Standards, 4 C.F.R. Parts 101-105, provide general guidance on installment payments. See 4 C.F.R. § 102.8. However, we believe matter should be resolved by employee and his agency.

This action is in response to the request of Mr. Robert V. Linderman for reconsideration of our prior decisions B-191121, November 24 and August 29, 1978, concerning Mr. Linderman's entitlement to real estate expenses incident to a transfer to an overseas duty station. Mr. Linderman has raised a number of arguments in his request for reconsideration, and we shall consider those arguments in order.

Our prior decisions held that Mr. Linderman was not entitled to reimbursement for real estate expenses incident to his transfer to an overseas post and that his entitlement was not affected by the fact that that his employing agency was reimbursed by a foreign government for the relocation expenses. In his request for reconsideration Mr. Linderman first argues that he was actually transferred from Oxnard, California, to Washington, D. C., and then detailed to the Trust Territories of the Pacific Islands (TTPI). He contends further that when an employee is transferred overseas and has return rights to a different duty station, that employee should be entitled to reimbursement for real estate expenses incident to the sale of his residence at his old duty station and the purchase of a residence at his new duty station upon his return from overseas assignment.

We are unable to agree with Mr. Linderman's contention that he was first transferred to Washington, D. C., prior to his overseas assignment. The record before us does not substantiate that contention and, furthermore, as we said in our prior decisions, Mr. Linderman's employing agency, the Department of the Interior, would not have been authorized to transfer him to Washington, D. C., for the purpose of paying certain relocation expenses where it was intended that Mr. Linderman would be transferred overseas after a very short time. See B-172594, March 27, 1974, and B-166181, April 1, 1969. With regard to Mr. Linderman's argument concerning real estate expenses where an employee has return rights from

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overseas to a different duty station, we have found no support for this position under the applicable laws and regulations or under our decisions.

Mr. Linderman next argues that since Interior has been reimbursed by the TTPI for all expenses incident to his transfer to Saipan, there is no further need for Interior to collect back the real estate expenses paid to Mr. Linderman. We cannot agree with this argument since Mr. Linderman's entitlement to relocation expenses is based upon the statutes and regulations governing travel and relocation expenses for Federal employees. See 5 U.S.C. §§ 5724 and 5724a (1976). As we stated in our prior decisions, an employee is entitled to reimbursement for real estate expenses only where both the old and new duty stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. 5 U.S.C. § 5724a(a)(4). Since Mr. Linderman was reimbursed for real estate expenses which were not authorized under law, such payments were erroneous and must be recovered by the employing agency.

In the event we do not render a decision in his favor, Mr. Linderman asks our Office to request the Congress to introduce a private relief bill on behalf of him and Mr. Willis A. Hestir, an employee who was reimbursed real estate expenses under similar circumstances and whose claim was the subject of our prior decision of August 29, 1978. Mr. Linderman argues that both he and Mr. Hestir have been damaged financially even though all parties acted in good faith.

Under the provisions of 31 U.S.C. § 236 (1976), the Meritorious Claims Act, the Comptroller General may submit a claim to the Congress where such claim may not be lawfully paid but where, in the judgment of the Comptroller General, the claim contains such elements of legal liability or equity as to be deserving of the consideration of the Congress. The remedy is an extraordinary one and its use is limited to extraordinary circumstances. The cases reported for the consideration of the Congress generally involve equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem, since to report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances. We have carefully reviewed the claims of Messrs. Linderman and Hestir, but we do not find the elements of

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unusual legal liability or equity which would justify our reporting these claims to the Congress under the Meritorious Claims Act.

Mr. Linderman has also inquired as to what other courses of action are available to him. He is advised that independent of the jurisdiction of the General Accounting Office, the United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501. Mr. Linderman could also request a Member of Congress to introduce a private relief bill.

Finally, Mr. Linderman asks us, if our decision is not favorable to him, to instruct Interior to delay collection of the indebtedness so long as Mr. Linderman indicates he is pursuing relief through the Congress or through legal action. In the alternative, Mr. Linderman requests our Office to instruct Interior to reduce the amount of the installment payments to a level which he can more reasonably manage.

With regard to the suspension of collection efforts, it has been our position that we do not object to the suspension of collection efforts relating to a debt due the United States when private relief legislation is pending before Congress or when a lawsuit has been filed in court. However, in the absence of pending legislation or litigation, we see no reason to delay collection actions any further. Should legislation be introduced or a lawsuit filed at a later date, we would have no objection to the suspension of collection efforts at that time.

With regard to the size of the installment payments which have been requested by Interior, we note that under the Federal Claims Collection Act Standards, 4 C.F.R. Parts 101-105 (1978), which are promulgated jointly by the Comptroller General and the Attorney General, collection of indebtedness may be accomplished through installment payments. See 4 C.F.R. § 102.8. This provision states that the size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay and that the Government's claim should be liquidated within 3 years. Beyond this general guidance, we are not in a position to recommend any specific action with regard to the size or frequency of the installments. We believe that this is a matter which should be resolved by Mr. Linderman and the Department of the Interior.

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Accordingly, based upon the above discussion we sustain our prior decisions holding that reimbursement for real estate expenses was not authorized and that the erroneous payments should be recovered.

*R. F. K. 11/7/42*  
Deputy Comptroller General  
of the United States